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No. 90-323

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1990

CARRIERS CONTAINER COUNCIL, INC.,
Petitioner,

vs.

MOBILE STEAMSHIP ASSOCIATION, INC., *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONDENTS' OPPOSITION TO MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

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Respondents[1] oppose the motion for leave to file a brief *amicus curiae* filed by the International Longshoremens' Association, AFL-CIO ("ILA"). The motion should be denied for three reasons.

First, as a party to this lawsuit, the ILA is not a proper *amicus curiae*. The ILA intervened as a defendant in the district court and thus had the opportunity to participate fully if it chose to do so. The ILA chose not to participate actively in the district court and did not appeal the district court's grant of summary

[1] *Respondents' Brief in Opposition* contains a complete list of these respondents, including the parent companies and subsidiaries of each corporate respondent. Supreme Court Rule 29.1. Respondents are referred to collectively as "the Plans."

judgment in favor of the Plans. Having elected to forego the opportunity to participate in the appeal of this case, the ILA should not be permitted to bypass normal procedures by now appearing as *amicus curiae*.

Second, the ILA's brief is not timely. CCC's *Petition* lists the ILA as a "respondent" in this Court. As a respondent who supports CCC's *Petition*, the ILA was required to file its response within 20 days after receipt of the *Petition*, a time limit that "may not be extended." Supreme Court Rule 12.4. The ILA failed to do so. The ILA should not be permitted to circumvent the rules of this Court by obtaining permission to appear as *amicus curiae*.

Finally, the ILA's *amicus* brief does not serve the stated purpose of Supreme Court Rule 37.1. The ILA's brief simply repeats CCC's unsupported argument that the court of appeals made a "procedural error" by permitting the district court to resolve disputed issues of material fact on summary judgment. Like CCC, the ILA wants this Court to review the facts and to reconsider the court of appeals' decision. Like CCC, the ILA is wrong. *See Respondents' Brief in Opposition* at 4-10, 12-16.[2]

While the ILA openly admits that its desire to have this Court re-examine the facts "is not a reason for this Court to grant certiorari" (*amicus* brief at 9), the ILA nevertheless argues that this Court should do so simply because the ILA imagines that the court of appeals'

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[2]The ILA's *amicus* brief misstates facts in the record and does not fairly or accurately represent the opinions of the district court or the court of appeals. *See Respondents' Brief in Opposition* at 4-11.

decision "will have an adverse effect on collective bargaining negotiations" in the longshore industry. The ILA's strident argument for granting certiorari is not supported by the record in this case and is not true.

After the district court ruled in this case, CCC and the ILA successfully negotiated a coastwide collective bargaining agreement that included a benefit program similar to the JSP, the "Carrier-ILA Container Freight Station Trust Fund." The district court's decision did not inhibit those negotiations and, in fact, had a beneficial impact in that CCC and the ILA properly established the new program as a jointly-administered trust fund under §302 of the Labor Management Relations Act, 29 U.S.C.A. §186. Moreover, in the current coastwide negotiations, CCC has proposed the creation of yet another jointly-administered trust fund to administer the payment of employee benefits funded by the Carriers' container royalty payments. In sum, labor negotiations in the longshore industry are proceeding without any of the dire consequences conjured by the ILA to adorn this case with undue significance.

CONCLUSION

The ILA's support for CCC's *Petition* is at best anomalous inasmuch as the *record* testimony of its representatives fully supports the court of appeals' decision -- both the ILA's Vice President and the ILA's current President testified that the ILA's original understanding was that JSP funds could *only* be used to benefit the local port plans (F4-3-41-42, 113-116, 118; F4-4-69-70). The court of appeals applied well-settled law to the facts of this case and correctly affirmed summary judgment in favor of the Plans.

The ILA's motion for leave to file an *amicus curiae* brief should be *denied*.

Dated September 26, 1990.

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